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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERARD K. PUANA, and
RICKY L. HARTSELL as Trustee
of the Florence M. Puana Trust,

Plaintiffs,

vs.

CITY AND COUNTY OF
HONOLULU, KATHERINE P.
KEALOHA, LOUIS M. KEALOHA,
MINH-HUNG "BOBBY"
NGUYEN, DANIEL SELLERS,
DEREK WAYNE HAHN, NIAL
SILVA, WALTER CALISTRO,
DRU AKAGI, JOHN and/or JANE
DOES 1-50,

CIVIL No. 16-00659 LEK-WRP
(Other Civil Action)

**PLAINTIFFS' CONCISE
STATEMENT OF FACTS IN
SUPPORT OF CROSS MOTION
FOR PARTIAL SUMMARY
JUDGMENT AGAINST
DEFENDANT CITY AND
COUNTY OF HONOLULU;
DECLARATION OF ERIC A.
SEITZ; EXHIBITS 1-20;
DECLARATION OF LORETTA
SHEEHAN; CERTIFICATE OF
COMPLIANCE; CERTIFICATE
OF SERVICE**

(Caption Continued on Next Page)

Defendants.

Hearing

NON-HEARING MOTION

JUDGE: Hon. Leslie E. Kobayashi

Trial Date: January 25, 2022

**PLAINTIFFS' CONCISE STATEMENT OF FACTS IN SUPPORT OF
CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT
AGAINST DEFENDANT CITY AND COUNTY OF HONOLULU**

Plaintiffs GERARD K. PUANA and RICKY L. HARTSELL, as Trustee of the Florence M. Puana Trust ("Plaintiffs"), by and through their undersigned attorneys, hereby submits their Concise Statement of Facts in Support of Cross Motion for Partial Summary Judgment Against Defendant City and County of Honolulu:

**I. PLAINTIFFS' CONCISE STATEMENT OF FACTS IN SUPPORT OF
CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT
AGAINST DEFENDANT CITY AND COUNTY OF HONOLULU**

	FACTS	SUPPORT
1	Katherine Kealoha was a deputy prosecuting attorney in the Department of the Prosecuting Attorney from 1993 to 2001, 2006 to 2008, and 2010 to 2017 and became a supervisor.	Seitz Declaration, Exhibits 6 and 10 (Plea agreement 18-00068; Conviction 17-00582)
2	Chief Kealoha was Chief of Police of the Honolulu Police Department from November of 2009 to January of 2017.	Seitz Declaration, Exhibits 7 and 11 (Plea agreement 18-00068; Conviction 17-00582)

3	Section 6-1604 of the Revised Charter of the City and County of Honolulu vests the Chief of Police with the authority to preserve the peace, protect persons and property, enforce applicable laws and ordinances, detect and arrest offenders, and promulgate rules and regulations necessary to organize and operate the Honolulu Police Department.	Seitz Declaration, Exhibit 13 (Revised Charter)
4	Section 6-1606 of the Revised Charter of the City and County of Honolulu prohibits the Police Commission from otherwise interfering with the operations and administrative affairs of the Honolulu Police Department	Seitz Declaration, Exhibit 13 (Revised Charter)
5	Katherine Kealoha used “Alison Lee Wong” as an alter ego to commit fraudulent activity.	Seitz Declaration, Exhibits 6 and 10 (Plea agreement 18-00068; Judgment 17-00582).
6	Between February of 2007 and October of 2009, Katherine Kealoha defrauded Gerard Puana out of approximately \$46,000.	Seitz Declaration, Exhibits 5 and 6 (First Superseding Indictment; Judgment 17-00582)
7	In 2009, Katherine Kealoha defrauded Florence Puana out of approximately \$513,484 which was derived from a reverse mortgage scheme.	Seitz Declaration, Exhibits 5 and 6 (First Superseding Indictment; Judgment 17-00582)
8	Katherine Kealoha fraudulently used “Alison Lee Wong” to notarize trust documents which placed the condominium purchased with some of the reverse mortgage proceeds into a trust for Gerard Puana over which she was the trustee.	Seitz Declaration, Exhibits 3 through 6 (New trial motion, New trial order; First Superseding Indictment; Judgment 17-00582)

9	In 2012 and 2013, Katherine Kealoha used her position as a deputy prosecuting attorney to portray Gerard Puana as a drug addict, to discourage family members from posting bail for him, to have special meetings with him to get him to enroll in drug treatment even though he did not have a drug problem, and to have his deferred plea set aside.	Seitz Declaration, Exhibits 5 and 6 (First Superseding Indictment; Judgment 17-00582)
10	In March of 2013, Florence Puana and Gerard Puana sued Katherine Kealoha in Civil No. 13-1-0686-03 (VLC) for fraud, breach of fiduciary duty, fraudulent concealment, conversion, and breach of trust alleging that she misappropriated money from them, that she concealed the misappropriation through the use of false documents and fraudulent misrepresentations, and that she failed to repay the reverse mortgage as she had promised.	(Seitz Declaration, Exhibit 2 (Complaint))
11	Katherine Kealoha counterclaimed against Florence Puana and Gerard Puana alleging that they defrauded her and that Gerard was supposed to repay the reverse mortgage instead of her.	Seitz Declaration, Exhibit 2 (Counterclaim)
12	In Civil No. 13-1-0686-03 (VLC), Katherine Kealoha created false documents using her alter ego "Alison Lee Wong," concealed and withheld documents, falsely disavowed documents, and lied in depositions in 2014 and at trial in 2015.	Seitz Declaration, Exhibits 3 through 6 (New trial motion; New trial order; First Superseding Indictment; Judgment 17-00582)
13	Civil No. 13-1-0686-03 (VLC) was tried in 2015 and resulted in a verdict in favor of Katherine Kealoha.	Seitz Declaration, Exhibits 3 and 4 (New trial motion; New trial order)
14	Between June of 2011 and December of 2014, Katherine Kealoha, Chief Kealoha, Minh-Hung Nguyen, Derek Wayne Hahn, and Niall Silva and other officers conducted surveillance of Gerard Puana, attempted to falsely implicate him in property crimes against the Kealohas, falsely implicated him in the June 21, 2013 theft of the Kealohas mailbox and testified falsely at Gerard Puana's trial in December of 2014 in Criminal No.	Seitz Declaration, Exhibits 5 through 7 (First Superseding Indictment and Judgments 17-00582)

	13-00735 LEK-BMK.	
15	This activity was undertaken to intimidate Gerard Puana and attempt to discredit him in his claims against Katherine Kealoha in Civil No. 13-1-0686-03 (VLC)	Seitz Declaration, Exhibits 5, 6, 7, and 20 (First Superseding Indictment, Judgments 17-00582; Trial transcript Silvert opening)
16	Chief Kealoha falsely testified at trial in Criminal No. 13-00735 LEK that Gerard Puana was the person in the surveillance video who stole his mailbox on June 21, 2013.	Seitz Declaration, Exhibit 20 (Trial Transcript)
17	The Court declared a mistrial in Criminal No. 13-00735 LEK-BMK after Chief Kealoha testified before the jury about Gerard Puana's prior burglary conviction.	Seitz Declaration, Exhibit 20 (Trial Transcript)
18	On December 16, 2014, on motion of the United States, the Court dismissed the indictment against Gerard Puana in Criminal No. 13-00735 LEK-BMK with prejudice.	Seitz Declaration, Exhibit 20 (Trial transcript; Judicial Notice of DE 371 in Criminal No. 13-00735 LEK-BMK)
19	On December 16, 2016, Niall Silva plead guilty in Criminal No. 16-00787 SOM to conspiring with Minh-Hung Nguyen, Derek Wayne Hahn, and Katherine Kealoha to obstruct justice and to make false statements. In his plea agreement, he admitted mishandling and altering a surveillance camera video of a subject stealing the Kealohas' mailbox on June 21, 2013, creating false reports about it, lying about it to Postal Inspectors, lying about it at trial in Criminal No. 13-00735 LEK-BMK, and then lying to the FBI about it in 2015.	Seitz Declaration, Exhibits 12 and 20 (Silva plea agreement; Trial transcript)
20	In December of 2016, the Police Commission was aware that Chief Kealoha had received a target letter in a federal grand jury corruption investigation and had placed himself on leave.	Seitz Declaration, Exhibit 18 (Sheehan Declaration)

21	On January 18, 2017, the City and County of Honolulu through the Police Commission, entered into an agreement which allowed Chief Kealoha to resign from the Honolulu Police Department in good standing and to receive a payment of \$250,000.00 over and above his pension.	Seitz Declaration, Exhibits 17 and 18 (Settlement agreement; Sheehan declaration)
22	By the express terms of the agreement with Chief Kealoha, neither the City and County of Honolulu nor the Honolulu Police Department could ever change Chief Kealoha's good standing even if he were subsequently convicted and required to return the \$250,000.00.	Seitz Declaration, Exhibits 17 and 18 (Settlement agreement; Sheehan declaration)
23	This agreement was personally negotiated by the City and County of Honolulu's chief legal advisor, Corporation Counsel Donna Leong, who presented it to the Honolulu Police Commission as a "take it or leave it" proposition and strongly urged its approval.	Seitz Declaration, Exhibits 13, 17 and 18 (Revised Charter; Settlement agreement; Sheehan declaration)
24	Then Commissioner Loretta Sheehan was the only commissioner to vote against the agreement and voiced her concerns over the agreement because she felt it was a ratification of Chief Kealoha's conduct and that there were sufficient grounds to terminate him for cause.	Seitz Declaration, Exhibit 18 (Sheehan declaration)
25	On October 19, 2017, Katherine Kealoha and Chief Kealoha were indicted in Cr. No. 17-00582 JMS-WRP and charged with, among other things, knowingly and willfully conspiring between 2011 and 2017 to deprive Gerard Puana under color of law of his right to be free from unreasonable searches and seizures.	Seitz Declaration, Exhibit 19 (Indictment)
26	On March 22, 2018, Katherine Kealoha and Chief Kealoha were charged in a First Superseding Indictment in Criminal No. 17-00582 JMS-WRP with, among other things, knowingly and willfully conspiring to deprive Gerard Puana under color of law of his right to be free from unreasonable searches and seizures between 2011 and 2017.	Seitz Declaration, Exhibit 5 (First Superseding Indictment)

27	On June 27, 2019, Katherine Kealoha, Chief Kealoha, Minh-Hung Nguyen, and Derek Wayne Hahn were found guilty after trial on Counts 1, 2, 6, and 8 of the First Superseding Indictment in Criminal No. 17-00582 JMS-WRP.	Seitz Declaration, Exhibits 3, 6, and 7 (New trial motion; Judgments 17-00582)
28	On October 21, 2019, Katherine Kealoha entered into a sentencing agreement with the United States in Criminal No. 17-00582 JMS-WRP in which she waived her right to appeal her conviction and sentence in that case and agreed to plead guilty and not move to withdraw her guilty pleas in Criminal Nos. 18-00068 JMS-WRP and 19-00015 JMS-WRP. She also acknowledged that the United States would be seeking sentencing enhancements against her for abuse of position of trust, commission of crime under color of law, committing a crime against a vulnerable victim.	Seitz Declaration, Exhibit 8 (Sentencing agreement 17-00582)
29	On October 21, 2019, Katherine Kealoha entered into a plea agreement with the United States in Criminal No. 18-0068 JMS-WRP in which she agreed to plead guilty to bank fraud and aggravated identity theft and waived her right to appeal her conviction and sentence in that case. She also acknowledged that the United States would be seeking sentencing enhancements against her for abuse of position of trust, commission of crime under color of law, committing a crime against a vulnerable victim.	Seitz Declaration, Exhibit 10 (Plea agreement 18-00068)
30	In that plea agreement, Katherine Kealoha admitted using the alter ego “Alison Lee Wong” to commit acts of fraud and that she stole the proceeds of Florence Puana’s reverse mortgage which she spent on her and Chief Kealoha’s extravagant lifestyle.	Seitz Declaration, Exhibit 10 (Plea agreement 18-00068)

31	On October 21, 2019, Chief Kealoha entered into a sentencing agreement with the United States in Criminal No. 17-00582 JMS-WRP in which he waived his right to appeal his conviction and sentence in that case and agreed to plead guilty and not move to withdraw his guilty pleas in Criminal No. 18-00068 JMS-WRP. He also acknowledged that the United States would be seeking sentencing enhancements against him for abuse of position of trust, commission of crime under color of law, committing a crime against a vulnerable victim.	Seitz Declaration, Exhibit 9 (Sentencing agreement 17-00582)
32	On October 21, 2019, Chief Kealoha entered into a plea agreement with the United States in Criminal No. 18-0068 JMS-WRP in which he agreed to plead guilty to bank fraud and waived his right to appeal his conviction and sentence in that case. She also acknowledged that the United States would be seeking sentencing enhancements against her for abuse of position of trust, commission of crime under color of law, committing a crime against a vulnerable victim.	Seitz Declaration, Exhibit 11 (Plea agreement 18-00068)
33	In that plea agreement, Chief Kealoha admitted that he stole the proceeds of Florence Puana's reverse mortgage which he spent on his and Katherine Kealoha's extravagant lifestyle.	Seitz Declaration, Exhibit 11 (Plea agreement 18-00068)
34	On August 23, 2019, Florence and Gerard Puana filed their motion for new trial in Civil No. 13-1-0686-03 (VLC) based on the evidence produced at trial in Criminal No. 17-00582 JMS-WRP, the jury's guilty verdict as to Counts 1, 2, 6, and 8 of the First Superseding Indictment, and the fraud committed upon the court by Katherine Kealoha.	Seitz Declaration, Exhibit 3 (New trial motion)
35	Florence Puana and Gerard Puana were not previously aware of the nature and breadth of the fraud that had been committed against them by Katherine Kealoha until her trial and conviction in Criminal No. 17-00582 in June of 2019.	Seitz Declaration, Exhibit 3 (New trial motion)

36	On October 30, 2019, Judge McWhinnie granted Florence and Gerard Puana's new trial motion under Rule 60(b) of the Hawaii Rules of Civil Procedure on the basis that Katherine Kealoha had committed a fraud upon the court.	Seitz Declaration, Exhibit 4 (New trial order)
37	On November 30, 2020, Katherine Kealoha was sentenced to sixty months' imprisonment as to Count 1 in Criminal No. 17-00582 JMS-WRP to run concurrently to sentences of 132 months' imprisonment as to Counts 2, 6, and 8 in the same case. She was also ordered to pay restitution to Florence Puana in the amount of \$243,453.96 and to Gerard Puana in the amount of \$46,261.00.	Seitz Declaration, Exhibit 6 (Judgment 17-00582)
38	On November 30, 2020, Chief Kealoha was sentenced to sixty months' imprisonment as to Count 1 in Criminal No. 17-00582 JMS-WRP to run concurrently to sentences of 84 months' imprisonment as to Counts 2, 6, and 8 in the same case. He was also ordered to pay restitution to Florence Puana in the amount of \$60,863.49 and to Gerard Puana in the amount of \$11,565.25.	Seitz Declaration, Exhibit 7 (Judgment 17-00582)
39	As reflected in their sentences, Chief Kealoha and Katherine Kealoha received sentencing enhancements for commission of an offense under color of law.	(Seitz Declaration, Exhibits 6 and 7 (Judgments 17-00582))

DATED: Honolulu, Hawai'i, September 24, 2021.

/s/ Eric A. Seitz
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